

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

wrb;sr
74-2387,8
n-65

To be Argued by
WILLIAM R. BRONNER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 75-6007

B
P/S

UNITED STATES OF AMERICA,
Petitioner-Appellee,

-v-

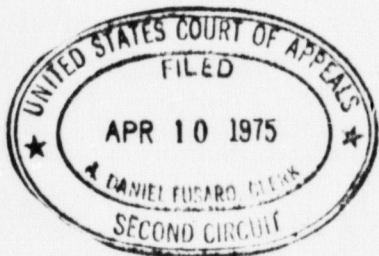
FIRST NATIONAL CITY BANK,
Respondent-Appellant,
CHEMICAL BANK,
Respondent

and

MILTON F. MEISSNER,
Appellant.

On Appeal From Orders of The United States District Court
For the Southern District of New York

APPENDIX OF THE UNITED STATES OF AMERICA



PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America.

WILLIAM R. BRONNER,
DAVID P. LAND,
STEVEN J. GLASSMAN,
Assistant United States Attorneys,

-Of Counsel-

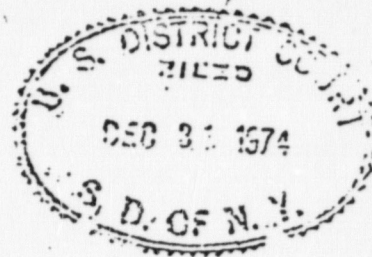
PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	PAGE
Opinion of the Court	1a
Order to Show Cause	8a
Petition and Exhibits	10a
Answer of Respondent	17a
Motion to Intervene	20a
Memorandum of Proposed Intervenor.	21a
Order	24a
Motion for Stay by Proposed Intervenor.	26a
Order on Stay Motion of Proposed Intervenor	28a
Motion for Stay by Respondent.	30a

Opinion of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
UNITED STATES OF AMERICA,

Petitioner,

-against-

FIRST NATIONAL CITY BANK
and CHEMICAL BANK NEW YORK
TRUST COMPANY,

Respondents.
-----x

M 18 304

OPINION

#41658

APPEARANCES:

Paul J. Curran, U.S. Attorney,
Southern District of New
York, for petitioner; William
Roche Bronner, Assistant U.S.
Attorney, of counsel.

Shearman & Sterling, New York
City, for First National City
Bank; Mathew C. Gruskin, of
counsel.

John B. Wynne, New York City,
for Chemical Bank New York
Trust Company.

R. Kenly Webster, Washington,
D.C., and Neal J. Harwitz,
New York City, for Milton
F. Meissner.

MacMAHON, District Judge.

Petitioner moves for an order permitting agents of the Director of International Operations of the Internal Revenue Service (IRS) to have access to certain safe deposit boxes located in respondents' offices.

Milton F. Meissner moves for an order permitting him to intervene in this proceeding.

It appears that on April 1, 1974 this court issued an order for the arrest of Milton F. Meissner for failing to appear before a grand jury pursuant to an order of this court. At that time, Mr. Meissner was not present in the United States and he has remained out of this country ever since.

On April 9, 1974, the Director of International Operations of the IRS made a jeopardy assessment against Milton F. Meissner for income taxes due and owing for the tax years 1970 and 1971, pursuant to 26 U.S.C. § 6851(a). Soon thereafter, the taxpayer was given notice of the assessment and payment was demanded.

On April 10, 1974, notices of levy and seizure were served upon respondent First National City Bank with

regard to its safe deposit box number 50 at Madison Avenue and 42nd Street in New York City, and respondent Chemical Bank New York Trust Company with regard to its safe deposit box number 208 at 79th Street and York Avenue, also in New York City. Both of these boxes are in Mr. Meissner's name.

Petitioner contends that these safe deposit boxes contain property belonging to Mr. Meissner and that its tax lien has attached to that property. It asserts that, although respondents have sealed the boxes in question, they have refused, in violation of 26 U.S.C. § 6332, to surrender the property in those boxes which the government seeks to reach in satisfaction of the unpaid taxes. Conceding that the safe deposit boxes cannot be opened by usual means, petitioner agrees to bear any expense occasioned by forcible opening of the boxes.

Jurisdiction is invoked under 26 U.S.C. § 7402, which authorizes us to issue orders which "may be necessary or appropriate for the enforcement of the internal revenue laws." A summary proceeding is appropriate here, since petitioner does not seek a determination of a property right but merely access to property

so that it may seize it following levy, as authorized by 26 U.S.C. § 6326. See generally; New Hampshire Fire Ins. Co. v. Scanlon, 362 U.S. 404 (1960).

Mr. Meissner seeks to intervene in this proceeding, presumably under Rule 19, Fed.R.Civ.P. If permitted to intervene, he seeks to oppose entry into the boxes on the ground that the government is investigating him with a view to criminal prosecution and to contend that the obtaining of evidence from the safe deposit boxes would constitute an illegal seizure, in violation of his rights under the Fourth Amendment.

Rule 19 compels joinder of a party claiming an interest "relating to the subject of the action," if his nonjoinder would "impair or impede his ability to protect that interest." A determination of the matter before us will in no way impair or impede Mr. Meissner's ability to protect his interests. The Internal Revenue Code permits the taxpayer to sue for a refund if his tax has been wrongfully assessed or collected. 26 U.S.C. § 7422. Moreover, if the government is involved in a criminal investigation of Mr. Meissner, he may challenge the legality of the seizure of any evidence

obtained from the boxes in that criminal proceeding. Granting the relief sought by petitioner, in Mr. Meissner's absence, will, therefore, in no way impair or impede his ability to protect his interests.

Turning now to the merits of petitioner's application, we note that the parties have not cited any cases dealing specifically with the issue before us. Nor has the court, in its independent research, found any cases precisely in point. It is clear, however, that in applying the Internal Revenue Code, we must look to state law to determine whether a taxpayer has property subject to a tax lien. Aquilino v. United States, 363 509 (1960); Morgan v. Commissioner, 309 U.S. 78 40).

In Carples v. Cumberland Coal & Iron Co., 240 N.Y. 187 (1925), the court confronted a problem similar to the one before us. There, plaintiff obtained a warrant of attachment against defendant's property and sought entry into a safe deposit box rented by defendant to enable the sheriff to levy on any leviable property it contained. The safe deposit company, like respondents here, refused to permit the box to be opened.

and plaintiff sought an order permitting the sheriff to break open the box.

The Court of Appeals held that the lower court properly issued an order permitting the sheriff to open the box. It reasoned that a "safe deposit box does not give property placed therein a status which renders it exempt from levy under a warrant of attachment." That principle is equally applicable here.

Placing property in a safe deposit box does not change its nature. It is subject to a tax lien whether in or out of the box. To permit a taxpayer to avoid levy and seizure of property in satisfaction of his tax liability by placing it in a safe deposit box would frustrate the enforcement provisions of the Internal Revenue Code. We cannot permit the taxpayer to shield selected assets from the tax laws simply by placing them in a safe deposit box.

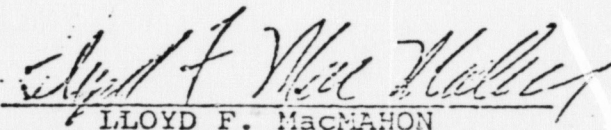
Accordingly, Milton F. Meissner's motion to intervene in this proceeding is denied. Petitioner's motion for an order permitting agents of the Director of International Operations of the IRS forcibly to enter the safe deposit boxes specified above,

bearing any expense occasioned by the means of entry,
is granted. .

- Settle order within ten (10) days.

Dated: New York, N. Y.

December 31, 1974


LLOYD F. MacMAHON
United States District Judge

Order to Show CauseWRB:mhr
74-2387/8UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

Petitioner, : ORDER TO SHOW CAUSE

-v- : M 18 304

FIRST NATIONAL CITY BANK, :

Respondent. :

-----x

Upon the Petition, the exhibits attached thereto, and on the motion of Paul J. Curran, United States Attorney for the Southern District of New York, it is

ORDERED that the First National City Bank, appear before the United States District Court for the Southern District of New York in the courtroom of the undersigned on the 15th day of October, 1974, then and there to show cause, if any it has, why authorized representatives or agents of the Director of International Operations, Internal Revenue Service, should not be permitted to have access to safe deposit box No. 50 located in Respondent's offices at Madison Avenue at 42nd Street, New York, New York, and leased to Milton F. Meissner.

IT IS FURTHER ORDERED that a copy of this Order, together with the Petition and exhibits attached thereto be served upon the First National City Bank on or before October 3, 1974, at 13:00 PM.

WRB:mhr
74-2387/8

IT IS FURTHER ORDERED that said respondent shall file its written response, if any, to said Petition, and serve a copy of same upon the petitioner, within five (5) days after service of said Petition.

Dated: New York, New York

October 4, 1974

S/Constance Baker Motley
UNITED STATES DISTRICT JUDGE

Petition and Exhibits

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	
Petitioner,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	
FIRST NATIONAL CITY BANK,	:	
	:	
Respondent.	:	PETITION FOR AN ORDER TO
	:	<u>OPEN SAFE DEPOSIT BOX</u>
-----X	:	

The petitioner, the United States of America, by its attorney, Paul J. Curran, United States Attorney for the Southern District of New York, respectfully shows unto this Court as follows:

I

This is a petition to compel compliance with Internal Revenue Service levy for unpaid federal taxes.

II

This action is commenced pursuant to Section 7401 of the Internal Revenue Code of 1954 at the direction of the Attorney General of the United States and with the request and authorization of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States.

III

Jurisdiction of this Court is invoked under Section 7402 of the Internal Revenue Code of 1954 and Sections 1340 and 1345 of Title 28 of the United States Code for the reason that this is an action arising under an Act of Congress providing for Internal Revenue and seeking a decree necessary and appropriate to the enforcement of the Internal Revenue laws.

IV

The respondent, First National City Bank, is a banking organization authorized to do business within the State of New York and maintaining an office for the transaction of business at its branch office located at Madison Avenue at 42nd Street, New York, New York, which is within the jurisdiction of this Court.

V

On April 9, 1974, the Director of International Operations, Internal Revenue Service, Washington, D. C., made an assessment against the taxpayers, Milton F. Meissner and Lula Ann Meissner, jointly and severally, for the tax years 1970 and 1971. This assessment is more fully described as follows:

INCOME TAX YEAR	DATES OF ASSESSMENT NOTICE AND DEMAND	AMOUNTS ASSESSED	DATE NOTICE OF OF LIEN FILED	BALANCE DUE a/o JUNE 1, 1974
1970	April 9, 1974	\$ 44,387.17(T) 7,950.19(I) 22,193.59(1)	April 10, 1974(2) April 11, 1974(3) April 22, 1974(4)	\$75,104.64
1971	April 9, 1974	112,755.92(T) 13,430.04(I) 56,377.96(1)	April 10, 1974(2) April 11, 1974(3) April 22, 1974(4)	184,021.24
Totals		<u>\$257,094.87 *</u>		<u>\$259,125.88 *</u>

- (T) - Tax assessed.
- (I) - Interest assessed.
- (1) - Fraud penalty assessed.
- (2) - Register, New York County, New York, New York.
- (3) - Prothonotary, Allegheny County, Pittsburgh, Pennsylvania.
- (4) - Recorder of Deeds, Washington, District of Columbia.
- * - Plus interest according to law upon the total of tax and penalty liabilities (\$235,714.64) on and after June 2, 1974, by multiplying same by .000164383 for each day.

VI

Despite the fact that notice of the assessment and demand for payment was duly made upon the taxpayers, Milton F. Meissner and Lula Ann Meissner, there remains due and owing to the United States of America from Milton F. Meissner and Lula Ann Meissner, jointly and severally, the sum of \$259,125.88, plus interest as provided by law on and after June 2, 1974.

VII

The petitioner alleges on information and belief that the taxpayer, Milton F. Meissner, is the lessee of the safe deposit box No. 50 located at the office of the respondent, First National City Bank, Madison Avenue at 42nd Street, in the Borough of Manhattan, City, County, and State of New York.

VIII

The petitioner alleges on information and belief that the taxpayer, Milton F. Meissner, is the sole owner of property and rights to property in safe deposit box No. 50.

IX

On April 10, 1974, a Notice of Levy and a Notice of Seizure were served upon the respondent, First National City Bank, with respect to safe deposit box No. 50 located at Madison Avenue at 42nd Street, New York, New York. Attached hereto as Exhibits A and B, and by reference made a part hereof, are copies of the aforementioned Notice of Levy and Notice of Seizure. The respondent has failed to honor the levy served upon it by petitioner's agent, and this failure has continued to the time of the filing of this petition.

X

The petitioner alleges that the aforementioned safe deposit box contains property and rights to property belonging to the taxpayer, Milton F. Meissner, to which the federal tax lien of the petitioner has attached and which the petitioner seeks to reach in satisfaction of the unpaid taxes as set forth in paragraph VI above.

XI

In order for the petitioner to exercise its rights under the Internal Revenue Code of 1954, it is necessary for the aforementioned safe deposit box to be opened. Entry into said box is not available to the petitioner by the usual means; hence, it is necessary that the said box be drilled or otherwise opened incident to gaining entry into the said box. Any damage resulting therefrom will be borne by the petitioner. After diligent search and inquiry, no assets sufficient to satisfy the outstanding tax liability of the taxpayer have been found in this or any other jurisdiction by the petitioner or its agents, other than such property as may be contained in the aforementioned safe deposit box. Petitioner is without recourse or any other remedy to satisfy the aforementioned taxpayer's unpaid tax liability, except by entering the said safe deposit box.

WHEREFORE, the petitioner prays as follows:

1. That this Court enter an order directing the respondent, First National City Bank, to show cause, if any it has, why authorized representatives or agents of the Director of International Operations, Internal Revenue Service, should not be permitted to have the safe deposit box described in paragraph VII above, drilled or otherwise forcibly entered on behalf of the United States of America to obtain any property or rights to property of the taxpayer, Milton F. Meissner.

2. That this Court enter an order directing the respondent, First National City Bank, to permit the petitioner to seize and obtain any property or rights to property belonging to the taxpayer, Milton F. Meissner, which may be contained in safe deposit box No. 50 which is located at the respondent's offices at Madison Avenue and 42nd Street, New York, New York, and that the respondent permit the petitioner to drill or

- 5 -

otherwise forcibly enter the said safe deposit box in order to obtain any property or rights to property of Milton F. Meissner, contained therein; and that the petitioner pay the necessary expenses instant to gain the entry into said box and the damages resulting to the box from said entry.

3. That this Court grant such other and further relief as the Court may deem just and proper under the circumstances.

PAUL J. CURRAN
United States Attorney

By: _____

Assistant United States Attorney
United States Court House
Room 312
Foley Square
New York, New York 10007

WILLIAM R. MORROW, JR.
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530

FORM 668-A
(REV. OCT. 1971)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

DATE

April 10, 1974

NOTICE OF LEVY

TO

First National City Bank
Madison Ave. and 42nd St.
N.Y., N.Y. 10017

ORIGINATING DISTRICT

Manhattan-1301

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of **\$ 257,094.87**

KIND OF TAX	TAX PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID BALANCE OF ASSESSMENT	STATUTORY ADDITIONS	TOTAL
104.0	12/31/70	4/9/74	174-14-3998	\$ 74,530.95	\$	\$ 74,530.95
104.0	12/31/71	4/9/74	174-14-3998	182,563.92		182,563.92
TOTAL AMOUNT DUE						\$257,094.87

You are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected or refused to pay, and that such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer for with respect to which you are obligated; and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

SIGNATURE

TITLE

Revenue Officer

ADDRESS (CITY AND STATE)

N.Y., N.Y.

(Name and Address of Taxpayer)

Milton F. and Lula Ann Weissner
c/o Main LaFrentz and Co.
280 Park Ave.
N.Y., N.Y. 10017

Exhibit #15

CERTIFICATE OF SERVICE

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named below.

NAME

H.C. HEALY

TITLE

MGR.

DATE AND TIME

4-10-74 2:02 P.M.

SIGNATURE OF REVENUE OFFICER

Notice of Seizure

Department of the Treasury
Internal Revenue ServiceFirst National City Bank
Madison Ave. and 42nd St.
N.Y., N.Y. 1001733
11 1972)
and Address

ant to the authority in section 6331 of the Internal Revenue Code and by virtue of a levy placed in my hands
ecution by the District Director of Internal Revenue of the district shown below, I have seized the following described
erty for nonpayment of delinquent internal revenue taxes:

from	In the Amount of	Internal Revenue District (City and State)
Milton F. and Lela Ann Maisner a/o Main LaFrents and Co. 280 Park Ave., N.Y., N.Y. 10017	\$257,094.57	N.Y., N.Y.

Description of Property

Contents of Safe Deposit Box No. 50

Signature of Revenue Officer

Address

Date

120 Church St., N.Y., N.Y.

4/10/74

Form 2433 Part 2 (Rev. 4-72)

Exh. b. T-16

Answer of Respondent

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
UNITED STATES OF AMERICA, : M 18 304

Petitioner, :

-against- :

FIRST NATIONAL CITY BANK, :

Respondent. :
----- -x

ANSWER OF RESPONDENT
TO PETITION FOR AN
ORDER TO OPEN SAFE
DEPOSIT BOX

Respondent First National City Bank by its attorneys, Shearman & Sterling, respectfully answers the petition as follows:

1. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs I, II, III, V, VI, VIII, X and XI.

2. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph VII, except that respondent leases a safe deposit box No. 50 at its branch at Madison Avenue and 42nd Street, New York, New York to Milton F. Meissner.

3. It denies each and every allegation contained in paragraph IX, except that on or about April 10, 1974 respondent was served with a Notice of Levy and a Notice of Seizure, copies of which are annexed to the petition as Exhibits A and B.

FILED
15 1974
U.S. DIST. CT. S.D. N.Y.

FURTHER ANSWERING THE PETITION,
RESPONDENT ALLEGES:

4. Respondent holds no property or rights to property of Milton F. Meissner.

5. Respondent controls the area surrounding the safe deposit box referred to in the petition but not the box itself, access to which is under the joint control of the respondent and the lessee.

6. Respondent has no access to said box without the use of lessee's key.

7. Respondent has agreed with the lessee not to permit access to said box except to the lessee or his deputy, and respondent intends to perform said agreement on its part.

8. Petitioner is without authority in law or in fact to destroy respondent's property, or to interfere with respondent's use or control of its own property, or to compel respondent to violate the terms of its safe deposit lease.

FOR A FIRST DEFENSE,
RESPONDENT ALLEGES:

9. There is no action pending between petitioner and respondent.

FOR A SECOND DEFENSE,
RESPONDENT ALLEGES:

10. Petitioner has failed to join Milton F. Meissner who is an indispensable party to this proceeding.

FOR A THIRD DEFENSE,
RESPONDENT ALLEGES:

11. The petition fails to state a claim
against respondent.

FOR A FOURTH DEFENSE,
RESPONDENT ALLEGES:

12. Purported process herein is insufficient
in law.

FOR A FIFTH DEFENSE,
RESPONDENT ALLEGES:

13. Maintenance of this proceeding constitutes
an improper abridgment of respondent's time to answer.

Dated: New York, New York
October 10, 1974

SHEARMAN & STERLING

By 

A Member of the Firm

Attorneys for Respondent
53 Wall Street
New York, New York 10005
(212) 483-1000

Motion to Intervene

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

v.

FIRST NATIONAL CITY BANK,

Respondent.

Civil Action No. M 18 304

MOTION TO INTERVENE

WHEREAS, this cause has been brought on by the Government's petition for an Order to open a safe deposit box, which alleges that Milton F. Meissner is the lessee of said safe deposit box, No. 50, located in respondent's offices at Madison Avenue and 42nd Street, New York, New York, and the sole owner of the contents thereof,

Milton F. Meissner respectfully moves this Court for leave to intervene as an intervener-respondent with leave to respond to the petition and thereafter to be heard at the hearing on the Order to show cause.

Respectfully submitted,

KENNEDY & WEBSTER

By

R. Kenly Webster, Esq.
888 17th Street, N.W., Suite 810
Washington, D. C. 20006
(202) 298-8208

Neal J. Hurwitz, Esq.
Neal J. Hurwitz, Esq.
375 Park Avenue, Suite 1309
New York, New York 10022
(212) 355-1300

Memorandum of Proposed Intervenor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

Petitioner

M 18-304

-against-

FIRST NATIONAL CITY BANK and
CHEMICAL BANK NEW YORK TRUST
COMPANY,

Respondents
-----x

BRIEF OF INTERVENER-RESPONDENT MILTON F. MEISSNER

Although the Government has filed separate actions against the Respondent banks - First National City Bank and Chemical Bank New York Trust Company - for purposes of efficiency, a single brief is submitted by Intervener-Respondent to treat the issues which are the same in each case.

INTRODUCTION

At oral argument on October 15, 1974, before the Honorable Lloyd F. MacMahon, the Court raised various issues in connection with this proceeding, not previously referred to in our papers filed with the Court. This brief is submitted in order to aid the Court in arriving at its decision by providing additional information and legal authorities with respect to the issues into which the Court inquired on

argument. As the Court is aware we are not a named party in the action brought by the Government and received courtesy copies of the Government's Petition on the day before oral argument.

I. BACKGROUND FACTS

The following facts bear upon the substantive issues to be considered by the Court:

1. A jeopardy assessment - a process referred to by Federal Courts as an "atomic weapon" in the hands of the Government, - was made against Dr. Meissner and a Notice of Assessment and Demand for Immediate Payment was mailed from Washington, D. C. on April 9, 1974 to the taxpayer in care of his accountants, Main LaFrentz & Company, 280 Park Avenue, New York, New York.

2. At that time - April, 1974 - and since June of 1970, the taxpayer has been a nonresident, a fact the IRS has recognized by permitting him an exemption under Section 911, which is only available to nonresidents, for the years 1970 and 1971, which are the taxable years at issue herein.

3. On the day following the mailing of the assessment to his accountants in the United States, without opportunity for the taxpayer even to receive the notice and, therefore, without opportunity to "fail or refuse" to pay the assessment as required by statute, the Government levied on all known property of the taxpayer, including the safe deposit boxes at issue in this case.

4. The basis for the assessment arises from information voluntarily provided to the IRS by the taxpayer, who belatedly recognized that he should have reported reimbursed expenses as income and itemized expenditures by him as deductions on his returns.

5. In making the jeopardy assessment, the IRS ignored practically all evidence of expenses actually incurred, which was contained in voluminous files at Main LaFrentz & Company and to which the IRS had full access.

6. The first opportunity that the taxpayer had to contest the amount of the assessment was in the Tax Court and taxpayer has duly filed a Petition in that Court, which is pending. The amount of the assessment is not an issue in this proceeding.

7. All available facts illustrate that the Government is conducting an ongoing criminal tax investigation: civil fraud penalties have been imposed with respect to the taxable years in question; the taxpayer is being investigated by the Intelligence Section of the IRS, which has responsibility for developing and presenting evidence required to prove criminal violations; a special agent has been assigned to investigate the case and special agents, as opposed to revenue agents, are engaged in securing evidence for criminal prosecutions; the form of deficiency letter sent to the taxpayer by the IRS is a form reserved for cases having "open criminal aspects" (See I.R. Manual 4463.2(1)(c)).

Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC

Filed
1/28/75

SDNY

-----x
UNITED STATES OF AMERICA,

Petitioner, :

v. :

FIRST NATIONAL CITY BANK,

Respondent. :
-----x

CIVIL ACTION NO. M 18 304

O R D E R

This Court being fully advised in the premises:

IT IS ORDERED that the First National City Bank shall comply with the notice of levy served upon it by allowing a duly authorized agent of the Director of International Operations, Internal Revenue Service, to drill or otherwise forcibly enter safe deposit box No. 50, leased by Milton F. Meissner, located at its branch at Madison Avenue at 42nd Street, New York, New York.

IT IS FURTHER ORDERED that the United States of America shall obtain possession of any property or rights to any property having any monetary value, not otherwise exempt by statute, which is contained in said safe deposit box.

IT IS FURTHER ORDERED that the First National City Bank shall maintain possession of any items contained in said safe deposit box not removed by the Internal Revenue Service until further Order of this Court.

IT IS FURTHER ORDERED that an officer of Respondent shall observe said opening and make an inventory of all property found therein and file said inventory with the Court.

IT IS FURTHER ORDERED that the necessary expenses of gaining entry and any damages resulting from entering said safe deposit box, along with any expenses of maintaining any remaining contents shall be borne by the United States of America.

DATED New York NY
January 27-1975

Lloyd F MacMahon
UNITED STATES DISTRICT JUDGE

APPROVED:

United States Attorney

By

Assistant United States Attorney
Attorneys for Petitioner

Attorneys for Respondent
First National City Bank

Motion for Stay by Proposed Intervenor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Petitioner,	:	
	:	
-against-	:	M 18-304
	:	
FIRST NATIONAL CITY BANK and	:	
CHEMICAL BANK NEW YORK TRUST	:	
COMPANY,	:	
	:	
Respondents.	:	
	:	

MOTION FOR STAY OF
PROPOSED INTERVENOR MILTON F. MEISSNER

Pursuant to Rule 62, Fed. R. Civ. Proc., proposed intervenor Milton F. Meissner hereby moves for a stay without bond pending appeal from the order of this Court granting the Government access into Dr. Meissner's safe deposit boxes.

MEMORANDUM

1. By its opinion of December 31, 1974, this Court has determined that it will grant the Government's petition to search the safe deposit boxes leased to Dr. Meissner and to seize various items contained therein. Failure to grant the stay would render moot substantial legal and constitutional issues raised in this case.

2. The safe deposit boxes have been sealed since early April, 1974 so that no one can get into and nothing can get out of these boxes.

3. Even if the Government seizes property in the safe deposit boxes, pursuant to 26 U.S.C. 6863(e)(3), the property cannot be sold (unless it is perishable) until after resolution of Dr. Meissner's pending petition in the Tax Court in which he has challenged the assessments.

4. Dr. Meissner intends to seek an appeal of this Court's decision and order granting the Government entry into the boxes.

5. For the foregoing reasons there can be no prejudice to the Government if the boxes remain sealed during appeal and the stay should be granted in order not to moot the legal and constitutional issues raised by Dr. Meissner.

Respectfully submitted,

KENNEDY & WEBSTER

By

R. Kenly Webster

R. Kenly Webster
888 17th Street, Northwest
Washington, D. C. 20006

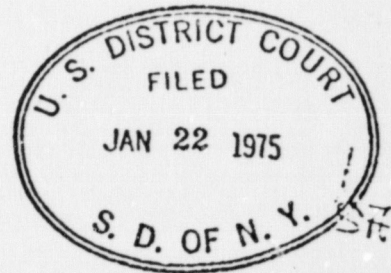
Neal J. Hurwitz, Esq.
745 Fifth Avenue
New York, New York 10022

Attorneys for Proposed Intervenor
Milton F. Meissner

DATED: January 21, 1975

Order on Stay Motion of Proposed Intervenor*Milton F. Meissner*

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

-against-

M 18-304

FIRST NATIONAL CITY BANK and
CHEMICAL BANK NEW YORK TRUST
COMPANY,

Respondents.

MOTION FOR STAY OF
PROPOSED INTERVENOR MILTON F. MEISSNER

Pursuant to Rule 62, Fed. R. Civ. Proc., proposed intervenor Milton F. Meissner hereby moves for a stay without bond pending appeal from the order of this Court granting the Government access into Dr. Meissner's safe deposit boxes.

MEMORANDUM

1. By its opinion of December 31, 1974, this Court has determined that it will grant the Government's petition to search the safe deposit boxes leased to Dr. Meissner and to seize various items contained therein. Failure to grant the stay would render moot substantial legal and constitutional issues raised in this case.

64

IN THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
Civil Action No. M 18-304

UNITED STATES OF AMERICA

v.

FIRST NATIONAL CITY BANK and
CHEMICAL BANK NEW YORK TRUST
COMPANY.

MOTION FOR STAY
OF PROPOSED INTERVENOR
MILTON F. MEISSNER
and
ORDER

R. Kenly Webster, Esq.
KENNEDY & WEBSTER
888 17th Street, N.W.
Washington, D. C. 20006
(202) 298-8208

Neal J. Hurwitz, Esq.
745 Fifth Avenue
New York, New York 10022
(212) 755-4300

January 27, 1975

The within motion for a stay pending appeal
of this Court's orders of this date is granted, provided
Milton F. Meissner, proposed intervenor, posts a
superseas bond in the amount of \$260,000⁰⁰ within
48 hours of the filing of his notice of
appeal. So ordered.

[Signature]

U. S. D. J.



Motion for Stay by Respondent

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA, : M 18 304

Petitioner, :

v. :

FIRST NATIONAL CITY BANK, : NOTICE OF MOTION
FOR STAY PENDING

Respondent, : APPEAL

and :

MILTON F. MEISSNER, :

Proposed :
Intervenor.

----- -x

TAKE NOTICE that the undersigned hereby moves for a stay pursuant to Rule 62, FRCP, without bond, pending hearing and determination of an appeal from the order of this Court which granted, in a summary proceeding, petitioner access to a certain safe deposit box and which also denied the lessee of the box the right to intervene in these proceedings.

Dated: New York, New York
March 27, 1975

SHEARMAN & STERLING

By *[Signature]*
A Member of the Firm

Attorneys for Respondent
First National City Bank
53 Wall Street
New York, New York 10005
(212) 483-1000

TO: PAUL J. CURRAN, ESQ.
United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

KENNEDY & WEBSTER
Attorneys for Proposed Intervenor
Milton F. Meissner
888 17th Street, Northwest
Washington, D.C. 20006

NEAL J. HURWITZ, ESQ.
Attorney for Proposed Intervenor
Milton F. Meissner
745 Fifth Avenue
New York, New York 10022